IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 9916 of 1993

Between:
M.Ganasekharan, son of Murugalingam,
V.C. Mani, Advocate, 31.Nanmaitharuvarkoil Arisikard street, Madurai. 625001

..... PETITIONER

AND

1 The Management , Southern Road ways Limited, Bandar Road, Labbipet, Vijayawada , Krishna Dist
2 The Presiding Officer , Labour Court Guntur
Guntur, Dist R2- Dismissed for Default vidue court order dt. 15/06/99

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate, writ, order or direction more particularly one in the nature of Writ of Certiorari, calling for the records relating to the award dt. 18/05/1993 . in I.D.No.437 of 1987 on the file of the Labour Court, Guntur and Quash the same as arbitrary, illegal and consequently to direct the Respondent No. 1 to re-instate the petitioner with full backwages and other consequential benefits.

Counsel for the Petitioner : MR.K.VENKATESWARLU

Counsel for the Respondent NO.1 : Mr. S.RAVINDRANATH

The Court Made the Following :

ORDER :

This Writ Petition is filed challenging the Award dated 18-05-1992 in I.D.No.434 of 1987 on the file of the Labour Court, Guntur.

The petitioner was working as a Clerk in the respondent Organisation. Disciplinary proceedings were initiated against him alleging negligence in discharging his duty as well as insubordination. On 04-06-1987 a charge-sheet was served on the petitioner calling upon to submit his explanation. The petitioner failed to submit his explanation. However, he participated in the enquiry and all the charges were held proved by the enquiry officer. On the basis of the said enquiry report, the respondent passed order dated 11-09-1987 dismissing the petitioner from service. Aggrieved by the same, the petitioner raised an industrial dispute which was registered as I.D.No.434 of 1987 on the file of the Labour Court, Guntur. No oral or documentary evidence was adduced before the Labour Court on either side. The petitioner also remained absent. The Labour Court after hearing the Counsel for the respondent Management and on appreciation of the material on record, held that the order of dismissal dated 11-09-1987 was valid and justified and therefore no relief could be granted to the petitioner. The said award dated 18-05-1992 is under challenge in this Writ Petition.

I have heard the learned Counsel for the petitioner as well as the learned Counsel for the first respondent Management and perused the material on record.

The learned Counsel for the petitioner contends that since no proper opportunity was afforded to the petitioner during the domestic enquiry, the entire proceedings are vitiated and liable to be set aside. The learned Counsel further contends that the Labour Court erred in not allowing the petitioner to file additional material to substantiate his case.

At any rate, according to the learned Counsel, the punishment of removal from service is shockingly disproportionate to the alleged misconduct and therefore it is a fit matter where the Labour Court ought to have exercised the discretion conferred under Section 11-A of the Industrial Disputes Act and ought to have awarded a lesser punishment.

As can be seen from the material on record, the fact that the petitioner failed to submit his explanation to the charges levelled against him under the charge-sheet dated 04-06-1987 is not disputed. However, the petitioner participated in the domestic enquiry and at his request the enquiry was adjourned twice. The request of the petitioner for assistance of one Sri Tirumalai for the purpose of translating and explaining the proceedings in Tamil was also accepted by the enquiry officer. Though he did not choose to cross-examine M.W.1, M.W.2, the second witness for the management was cross-examined by him. Even the copies of the documents marked by the management through M.W.2 and the copy of the Standing Orders were furnished to the petitioner. Even thereafter, the petitioner sought further adjournment on 12-08-1987 and 14-08-1987 which was not accepted by the enquiry officer observing that he was attempting to drag on the proceedings. In the circumstances, the enquiry officer was constrained to proceed with the enquiry in the absence of the petitioner and filed enquiry report on appreciation of the material on record holding that the charges were held proved. Having regard to the aforesaid admitted facts, I am unable to hold that the petitioner was not afforded proper opportunity during the domestic enquiry. As a matter of fact, the objection raised by the petitioner as to the validity of the domestic enquiry has been considered by the Labour Court as a preliminary issue and by order dated 21-12-1989 the Labour Court held that there were no grounds to hold that the domestic enquiry was vitiated on any ground whatsoever. The said finding has become final and the petitioner never questioned the same. At any rate, on a careful consideration of the material on record, I do not find any substance in the contention of the learned Counsel for the

petitioner that the petitioner was not afforded proper opportunity by the enquiry officer to present his case. It is clear from the impugned award that even before the Labour Court the petitioner repeatedly sought adjournments and the case underwent as many as 20 adjournments. In the circumstances, I am of the view that the Labour Court has rightly proceeded further on the basis of the material available on record.

I am also unable to agree with the further contention of the learned Counsel that the petitioner ought to have been permitted to produce fresh evidence before the Labour Court to substantiate his case. It is true that taking of fresh evidence by the Tribunal is permissible. However, it cannot be claimed as a matter of course. The impugned Award shows that in spite of several adjournments, he failed to appear and there was no representation on his behalf. A clear finding was recorded that the domestic enquiry was conducted in conformity with the principles of natural justice and an order was passed long back upholding the validity of the domestic enquiry. In the light of the said finding that the enquiry was fair and not vitiated and particularly in view of the conduct of the petitioner before the enquiry officer and also before the Labour Court in not participating in the proceedings, it cannot be said that the Labour Court committed any error in declining to consider fresh evidence.

The two decisions cited by the learned Counsel for the petitioner namely *STATE OF U.P. v. C.S. SHARMA*[1] and *BOARD OF TRUSTEES, PORT OF BOMBAY v. DILIPKUMAR*[2] are clearly distinguishable on facts.

In *C.S. SHARMA's case (1 supra),* the petitioner therein indicated to the enquiry officer that he would lead evidence in his defence and he also gave a list of witnesses. The enquiry officer on more than one occasion stated that he would be afforded opportunity and the date would be fixed for the examination of defence witnesses.

However, the request of the petitioner for further time was rejected on February, 6, 1954 and a report was submitted by the enquiry officer on April, 8, 1954. The Supreme Court while observing that no action was taken between February 6, 1954 and April 8, 1954 to enable the petitioner to lead his defence, if any, in support of his part of the case held that since two long months passed and it was possible for the Commissioner to have fixed a date, on which, the petitioner could bring his witnesses in support of his case, the enquiry cannot be said to be in compliance with the elementary principles of natural justice and therefore the enquiry was vitiated.

In *DILIPKUMAR's case (2 supra)*, the permission sought by the delinquent to engage a legal practitioner for his defence was rejected by the enquiry officer. However, simultaneously two officers both legally trained were appointed as presenting officers. After enquiry was commenced, the regulations applicable to the enquiry were amended enabling him to present the case on his behalf. The question raised before the Supreme Court was whether in a disciplinary enquiry, the employer complaining misconduct appoints legally trained person as presenting-cum-prosecuting officer, denial or refusal of a request by the delinquent employee seeking permission to engage a legal practitioner to defend him at the enquiry, would violate one of the essential principles of natural justice which would vitiate the enquiry. The Supreme Court answered the said question in affirmative holding that the enquiry was held in violation of principles of natural justice since the delinquent was not afforded a reasonable opportunity to defend himself.

In the case on hand, the facts are entirely different from that of the cited cases. The impugned Award shows that the petitioner was never diligent in conducting the proceedings either before the enquiry officer or before the Labour Court. Nothing has been placed before this Court to show that he made any request to adduce fresh evidence before the Labour Court and how it is material to decide the issue in question. Hence, I am unable to hold that the impugned Award is vitiated on that

ground.

As can be seen from the record, the petitioner was charged with misconduct, negligence in discharging duties and insubordination. All the said charges were held proved. The Labour Court on reappreciation of the entire material on record and also taking into consideration the past conduct of the petitioner which shows that he was habitually negligent in discharging his duties, held that this is not a fit case for exercising the discretion under Section 11-A of the Industrial Disputes Act. In the light of the finding that the order of dismissal from service is justified, the Labour Court has rightly refused to exercise the power under Section 11-A of the I.D. Act. The said award cannot be termed as either illegal or arbitrary. The Writ Petition is devoid of any merit and therefore no interference is warranted under Article 226 of the Constitution of India.

The Writ Petition is accordingly dismissed. No costs.

17TH JUNE, 2004.
GBS

ASSISTANT REGISTRAR

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SECTION OFFICER

To
1 The Management , Southern Road ways Limited, Bandar Road, Labbipet, Vijayawada , Krishna Dist
2 The Presiding Officer , Labour Court Guntur
Guntur, Dist R2- Dismissed for Default vidue court order dt. 15/06/99
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[1] AIR 1968 SC 158
[2] AIR 1983 SC 109